UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/601,992
Filing Date: June 23, 2003
Appellant(s): CHERKASOVA ET AL.

MAILED

OCT 0 2 2007

Technology Center 2100

Jody C. Bishop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/19/07 appealing from the Office action mailed

2/23/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| 5,991,811 | Ueno et al. | 11-1999 |
| 6,910,024 | Krishnamurthy et al. | 6-2005 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 29-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A signals is a non-statutory invention. Examiner rejection is based upon paragraph 157 of the specification

*When implemented via computer-executable instructions, various elements of embodiments of the present invention for modeling a media server's memory are in essence the software code defining the operations of such various elements. The executable instructions or software code may be obtained **from a readable medium** (e.g., a hard drive media, optical media, EPROM, EEPROM, tape media, cartridge media, flash memory, ROM, memory stick, and/or the like) or **communicated via a data signal from a communication medium (e.g., the Internet). In fact, readable media can include any medium that can store or transfer information.***

Which makes a computer readable medium a non-statutory invention.

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with

functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101.

First, a claimed signal is clearly not a "process" under § 101 because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures "relate to structural entities and can be grouped as 'product' claims in order to contrast them with process claims." 1 D. Chisum, Patents § 1.02 (1994). The three product classes have traditionally required physical structure or material.

"The term machine includes every mechanical device or combination of mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." Corning v. Burden, 56 U.S. (15 How.) 252, 267 (1854). A modern definition of machine would no doubt include electronic devices which perform functions. Indeed, devices such as flip-flops and computers are referred to in computer science as sequential machines. A claimed signal has no physical structure, does not itself perform any useful, concrete and tangible result and, thus, does not fit within the definition of a machine.

A "composition of matter" "covers all compositions of two or more substances and includes all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." Shell Development Co. v. Watson, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), aff'd, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958). A claimed signal is not matter, but a form of energy, and therefore is not a composition of matter.

The Supreme Court has read the term "manufacture" in accordance with its
dictionary definition to mean "the production of articles for use from raw or prepared
materials by giving to these materials new forms, qualities, properties, or combinations,
whether by hand-labor or by machinery." Diamond v. Chakrabarty, 447 U.S. 303, 308,
206 USPQ 193, 196-97 (1980) (quoting American Fruit Growers, Inc. v. Brogdex Co.,
283 U.S. 1, 11, 8 USPQ 131, 133 (1931), which, in turn, quotes the Century Dictionary).
Other courts have applied similar definitions. See American Disappearing Bed Co. v.
Arnaelsteen, 182 F. 324, 325 (9th Cir. 1910); cert. denied, 220 U.S. 622 (1911). These
definitions require physical substance, which a claimed signal does not have. Congress
can be presumed to be aware of an administrative or judicial interpretation of a statute
and to adopt that interpretation when it re-enacts a statute without change. Lorillard v.
Pons, 434 U.S. 575, 580 (1978). Thus, Congress must be presumed to have been
aware of the interpretation of manufacture in American Fruit Growers when it passed
the 1952 Patent Act.

A manufacture is also defined as the residual class of product. 1 Chisum, § 1.02[3]
(citing W. Robinson, The Law of Patents for Useful Inventions 270 (1890)).
A product is a tangible physical article or object, some form of matter, which a signal is
not. That the other two product classes, machine and composition of matter, require
physical matter is evidence that a manufacture was also intended to require physical
matter. A signal, a form of energy, does not fall within either of the two definitions of

manufacture. Thus, a signal does not fall within one of the four statutory classes of §

101.

Applicant is suggested to review the interim guidelines in the Official Gazette Notices dated 22

November 2005, under Guidelines for Subject Matter Eligibility.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2,6-8,23-25, 29-33, and 37-39 are rejected under 35 U.S.C. 102(b) as being

anticipated by Ueno et al. (U.S. Patent 5,991,811).

For claim 1, Ueno teaches, a method for managing admission of requests to a streaming media

server,

the method comprising:

receiving a new request for a streaming media file to be served by a streaming media

server; (Ueno, Col. 8 lines 1-5)

performing a resource availability check for the streaming media server to determine

whether the streaming media server has sufficient available resources to service the new request;

(Ueno, Col. 16 line 49 to Col. 17 line 26)

and performing a quality of service guarantee check for the streaming media server to

determine whether acceptance of the new request will violate, at any point in the future, a desired

quality of service provided by the streaming media server for any previously accepted requests.

(Ueno, Col. 16 line 49 to Col. 17 line 26)

For claim 2, Ueno teaches, the method of claim 1 wherein said resource availability check

comprises:

using a segment-based memory model to determine whether at least a portion of the requested

streaming media file is in the streaming media server's memory. (Ueno, Col. 11 lines 10-25, Col.

8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 6, Ueno teaches, the method of claim 1 wherein said resources comprise memory

resources and disk resources. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to

Col. 17 line 26)

For claim 7, Ueno teaches, the method of claim 1 wherein said sufficient available resources to

service the new request comprises sufficient resources available so as not to overload the

streaming media server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17

line 26)

For claim 8, Ueno teaches, the method of claim 1 wherein said desired quality of service

comprises real-time delivery of streaming media files requested by said previously accepted

requests. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 23, Ueno teaches, a method comprising:

      receiving, at a time T.sub.cur, a new request for a streaming file to be served by a media

server; (Ueno, Col. 9 line 63 to Col. 10 line 5)

      creating a segment-based model of the media server's memory as of time T.sub.cur;

(Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

      and based at least in part on the segment-based model of the media server's memory,

determining whether to accept the received request for service by the media server. (Ueno, Col.

11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 24, Ueno teaches, the method of claim 23 wherein said segment-based model of the

media server's memory comprises (a) identification of unique segments of streaming files

previously accessed by clients of the media server and (b) identification of corresponding

timestamps of most recent accesses of each unique segment. (Ueno, Col. 9 line 63 to Col. 10 line

5)

For claim 25, Ueno teaches, the method of claim 23 wherein said determining whether to accept

the

received request for service by the media server comprises:

determining whether the received request can be serviced by the media server without

overloading the media server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to

Col. 17 line 26)

For claim 29, Ueno teaches, computer-executable software stored to a computer-readable

medium, the

computer-executable software comprising:

code for creating a segment-based model of a media server's memory; (Ueno, Col. 11

lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

and code for determining whether to serve a requested streaming file from the media

server based at least in part on the segment-based model of the media server's memory. (Ueno,

Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 30, Ueno teaches, the computer-executable software code of claim 29 further

comprising:

code for receiving a request for said streaming file. (Ueno, Col. 7 lines 61-67)

For claim 31, Ueno teaches, the computer-executable software code of claim 30 further

comprising:

code, responsive to receiving said request, for determining whether to accept the request for

service by the media server. (Ueno,)

For claim 32, Ueno teaches, the computer-executable software code of claim 31 wherein said

code for

determining whether to accept the request for service by the media server

comprises:

code for determining whether the request can be serviced by the media server without

overloading the media server. (Ueno, Col. 9 line 62 to Col. 10 line 6)

For claim 33, Ueno teaches, the computer-executable software code of claim 29 wherein said

segment-based model of the media server's memory comprises (a) identification of unique

segments of streaming files previously accessed by clients of the media server and (b)

identification of corresponding timestamps of most recent accesses of each unique segment.

(Ueno, Col. 9 line 63 to Col. 10 line 5)

For claim 37, Ueno teaches, a cost-aware admission control system comprising:

means for receiving, at a time T.sub.cur, a new request for a streaming file to be served

by a media

server; (Ueno, Col. 9 line 63 to Col. 10 line 5)

means for creating a segment-based model of the media server's memory as of time

T.sub.cur; (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

and means for determining, based at least in part on the segment-based model of the

media server's memory, whether to accept the

received request for service by the media server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11,

Col. 16 line 49 to Col. 17 line 26)

For claim 38, Ueno teaches, the cost-aware admission control system of claim 37 wherein said

segment-based model of the media server's memory comprises (a) identification of unique

segments of streaming files previously accessed by clients of the media server and (b)

identification of corresponding timestamps of most recent accesses of each unique segment.

(Ueno, Col. 9 line 63 to Col. 10 line 5)

For claim 39, Ueno teaches, the cost-aware admission control system of claim 37 wherein said

means for

determining whether to accept the received request for service by the media

server comprises:

means for determining whether the received request can be serviced by the media server

without overloading the media server. (Ueno, Col. 9 line 62 to Col. 10 line 6)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a person
having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
manner in which the invention was made.

Claims 3-5, 9-11, 13-17, 19-22, 26-28, 35-36 and 40 are rejected under 35 U.S.C. 103(a)

as being unpatentable over the combination of Ueno et al. (U.S. Patent 5,991,811) and

Krishnamurthy et al. (U.S. Patent 6,910,024).

For claim 3, Ueno-Krishnamurthy teaches, the method of claim 2 further comprising:

from the segment-based memory model associated with serving the requested streaming

media file from the streaming media server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col.

16 line 49 to Col. 17 line 26)

Uenon fails to disclose clearly, determining a cost, Uenon does factor cost into decisions

Krishnamurthy teaches, determining a cost (Krishnamurthy, Col. 2 lines 43-51)

Both Uenon and Krishnamurthy are in the field of Qos of data

Uenon is compatible with Krishnamurthy because Uenon factors in cost into his implementation

It would have been obvious to on of ordinary skill in the art at the time of the invention was made to combine Uenon with Krishnamurthy because communication are high and Krishnamurthy have a way of charging for service. (Uenon, Col. 3 line 12) and (Krishnamurthy, Col. 5 lines 37-55, Col. 2 lines 56-63)

For claim 4, Ueno-Krishnamurthy teaches, the method of claim 1 wherein said resource availability check comprises:

determining a cost associated with serving the requested streaming media file from the streaming media server. (Krishnamurthy, Col. 5 lines 38-51) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 4.

For claim 5, Ueno-Krishnamurthy teaches, the method of claim 4 wherein the cost comprises:

a cost of serving the requested streaming media file either from memory or from disk. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) and (Krishnamurthy, Col. 5 lines 38-51) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 5.

For claim 9, Ueno-Krishnamurthy teaches, the method of claim 1 further comprising:

if determined that the streaming media server has sufficient available resources to service the new request and determined that acceptance of the new request will not violate, at any point in the future, said desired quality of service provided by the streaming media

server for any previously accepted requests, then the streaming media server serving the

requested streaming media file for said new request. (Ueno, Col. 9 line 62 to Col. 10 line 6) and

(Krishnamurthy Col. 4 lines 21-25) The same motivation that was utilized in the rejection of

claim 3, applies equally as well to claim 9.

For claim 10, Ueno-Krishnamurthy teaches, the method of claim 1 further comprising:

if determined that the streaming media server does not have sufficient available resources

to service the new request or determined that acceptance of the new request will violate, at any

point in the future, said desired quality of service provided by the streaming media server for any

previously accepted requests, then rejecting the new request for service by the streaming media

server. (Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25) The same

motivation that was utilized in the rejection of claim 3, applies equally as well to claim 10.

For claim 12, Krishnamurthy-Ueno teaches, the method of claim 11 wherein said determining

said cost comprises:

determining a segment-based memory model that identifies content of the media server's

memory as of a time that the new request is received; (Krishnamurthy, Col. 2 lines 43-51) and

(Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

and using the segment-based memory model to determine whether at least a portion of

the requested streaming file is in the media server's memory. (Krishnamurthy, Col. 2 lines 43-51)

and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same

motivation that was utilized in the rejection of claim 3, applies equally as well to claim 12.

For claim 13, Krishnamurthy-Ueno teaches, the method of claim 12 wherein the cost comprises:

a cost of serving the requested streaming file from memory if determined that the

requested streaming file is in the media server's memory and a cost of serving the requested

streaming file from disk if determined that the requested streaming file is not in the media

server's memory. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8

lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in the

rejection of claim 3, applies equally as well to claim 13.

For claim 16, Krishnamurthy-Ueno teaches, the method of claim 14 wherein said determining

whether to admit the new

request for service by the media server further comprises:

performing quality of service guarantee check for the media server to determine whether

acceptance of the new request will violate, at any point in the future, a desired quality of service

provided by the media server for any previously accepted requests. (Ueno, Col. 9 line 62 to Col.

10 line 6) and(Krishnamurthy, Col. 4 lines 21-25) The same motivation that was utilized in the

rejection of claim 3, applies equally as well to claim 16.

For claim 18, Krishnamurthy-Ueno teaches, the system of claim 17 wherein said admission

controller is further operable to determine a segment-based memory model that identifies content

of the server's memory as of a time that the new request is received, and said admission

controller is operable to use the segment-based memory model to determine whether at least a

portion of the requested streaming file is in the server's memory. (Krishnamurthy, Col. 2 lines

43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The

same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 18.

For claim 19, Krishnamurthy-Ueno teaches, the system of claim 17 wherein the cost comprises:

a cost of serving the requested streaming file from memory if determined that the

requested streaming file is in the server's memory and a cost of serving the requested streaming

file from disk if determined that the requested streaming file is not in the server's memory.

(Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16

line 49 to Col. 17 line 26) The same motivation that was utilized in the rejection of claim 3,

applies equally as well to claim 19.

For claim 26, Ueno-Krishnamurthy teaches, the method of claim 23 wherein said determining

whether to accept the

received request for service by the media server comprises:

determining a cost to the server for serving the requested streaming file, wherein the cost

corresponds to the amount of the media server's resources to be consumed in serving the

requested streaming file. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25,

Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in the

rejection of claim 3, applies equally as well to claim 26.

For claim 27, Ueno-Krishnamurthy teaches, the method of claim 23 wherein said determining whether to accept the

received request for service by the media server comprises:

performing a resource availability check for the media server to determine whether the media server has sufficient available resources to service the new request. (Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25, Col. 5 lines 37-52) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 27.

For claim 28, Ueno-Krishnamurthy teaches, the method of claim 23 wherein said determining whether to accept the

received request for service by the media server comprises:

performing quality of service guarantee check for the media server to determine whether acceptance of the new request will violate, at any point in the future, a desired quality of service provided by the media server for any previously accepted requests. (Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 28.

For claim 34, Ueno-Krishnamurthy teaches, the computer-executable software code of claim 29 wherein said code for

determining whether to serve a requested streaming file from the media server comprises:

code for determining a cost to the media server for serving the requested streaming file, wherein the cost corresponds to the amount of the media server's resources to be consumed in serving the requested streaming file. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) and (Krishnamurthy, Col. 5 lines 38-51) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 34.

For claim 35, Ueno-Krishnamurthy teaches, the computer-executable software of claim 29 wherein said code for determining whether to serve a requested streaming file from the media server comprises:

code for performing a resource availability check for the media server to determine whether the media server has sufficient available resources to service the new request. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 35.

For claim 36, Ueno-Krishnamurthy teaches, the computer-executable software code of claim 29 wherein said code for

determining whether to serve a requested streaming file from the media server

comprises:

code for performing quality of service guarantee check for the media server to determine whether acceptance of the new request will violate, at any point in the future, a desired quality of service provided by the media server for any previously accepted requests. (Krishnamurthy, Col.

2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line

26) The same motivation that was utilized in the rejection of claim 3, applies equally as well to

claim 36.

For claim 40, Ueno-Krishnamurthy teaches, the cost-aware admission control system of claim 37

wherein said means for

determining whether to accept the received request for service by the media

server comprises:

    means for determining a cost to the server for serving the requested streaming file,

wherein the cost corresponds to the amount of the

media server's resources to be consumed in serving the requested streaming file. (Krishnamurthy,

Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17

line 26) The same motivation that was utilized in the rejection of claim 3, applies equally as well

to claim 40.

Claims 11, 14, 15, 17, 20-22, and 41-42 list all the same elements of claims 3-5, 9-10, 12-13, 16,

18-19, 26-28, 35-36 and 40, directed to the same invention. Therefore, the supporting rationale

of the rejection to claims 3-5, 9-10, 12-13, 16, 18-19, 26-28, 35-36 and 40 applies equally as

well to claim 11, 14, 15, 17, 20-22 and 41-42.

(10) Response to Argument

A. Rejection Under 35 U.S.C. 101

Appellant has argued that a computer readable medium defined in the specification as including a signal as a medium is patentable. Appellant relies upon an improper fact pattern of In re Lowry, therefore appellant's argument is not relevant. The presently claimed invention is non-statutory.

B. Rejection Under 35 U.S.C. 102(b)

Independent Claim 1 and Dependent Claims 6-8

Appellant argues that Ueno fails to teach "performing a quality of service guarantee check for the streaming media server to determine whether acceptance of then new request will violate, at any point in the future, a desired quality of service provided by the streaming media server for any previously accepted requests." Examiner disagrees. Ueno discusses bandwidth allocation as new video is begun to stream at which point a minimum transmission rate and a peak rate are established and the video is schedule based upon this bandwidth data, therefore allowing the video to predict the quality of service now and in the future when the peak rate is reached Col. 16 lines 49-67. This prevents the system from accepting request that will violate now and in the future because the bandwidth to service the new request is not available. This bandwidth is allocated to videos that have previously been request the bandwidth, therefore guaranteeing bandwidth now and in the future. Additionally appellant's argument against the prior art is based upon portions of the reference, which the examiner has not cited. Ueno process of FIFO transmission with the additional bandwidth data anticipates appellant's present claim limitation Col. 17 lines 1-45. Therefore Ueno anticipates the claimed invention

For appellants argument directed to claim 6-8 appellant relies upon arguments addressed above.

Dependent Claim 2

For claim 2, appellant again argues the features of claim 1, which are addressed in the above statements.

Appellant argues "segment-based" memory model. Examiner disagrees. Appellant's

arguments are directed to the interpretation of the claimed subject matter as defined in the

specification. The examiner reviewed paragraph 32 of the specification, but appellant has not

defined segment-based memory. Appellant gives examples of embodiments, but does not define

segment-based memory, therefore examiner must use the broadest possible interpretation of the

term segment-based memory. Broadest possible interpretation of appellant's definition the video

file is to break to video is to segments or portions of the original video file. Ueno teaches,

providing video in this segment based format. Based upon interpretation of appellant invention

Ueno discussed dividing the video into parts and streaming portions as necessary in Col. 11 lines

10-25. Therefore Ueno anticipates appellant's presently claimed invention.

Independent Claims 23 and Claim 25

In discussing claim 23 appellant argues feature that are present in claim 1 and 2 which

examiner has already addressed. Appellant also argues Tcur. Tcur is a feature inherent to a real-

time systems like Ueno. As in claim 2, Ueno determines whether to accept to provide service in

real-time system. Ueno also provides service using segment based memory, as lines Col. 11 lines

10-25. Appellant does not present any new arguments that over come the prior art. Claim 25

relies upon the same argument as well. Therefore the presently claimed invention is anticipated

by Ueno

Dependent claim 24

Appellant does not does not argue any features of claim just relies upon the argument

presented addressing claim 23 therefore the arguments addressed above, provide that the

invention as presently claimed is anticipated. Ueno discusses time stamps Col. 10 line 2.

Therefore appellant has not presented any new arguments. Ueno anticipates the presently

claimed invention.

Independent Claim 29 and Dependent Claims 30-32

In addressing claim 29 appellant relies upon the same arguments addressed in claim 23

and therefore also fails to overcome the prior art.

Dependent claim 33

Appellant again relies upon issues addressed above, the previous claims. Ueno anticipates

the presently claimed invention.

Independent claim 37 and Dependent claim 39

Again appellant argues the same issues addressed above, therefore appellant again fails to

overcome the prior art.

Dependent Claim 38

Again appellant has relied upon arguments addressed above.

Rejections Under 103(a)

Dependent Claim 3

Appellant argues the limitation "determining from the segment-based memory model a cost associated with service the requested streaming media file from the stream media server." Examiner disagrees. The combination of Krishnamurthy and Ueno teach determining a cost. Krishnamurthy a price based on quality of service.

Dependent Claim 4 and 9

Appellant argues the features of claim 1, where are addressed above.

Dependent Claim 5

For claim 5 appellant argues a combination of limitations from claim 4 and claim 5. Appellant argues "wherein said resource availability check comprises: determining a cost associated with serving the request streaming media file from the streaming media server" and "wherein the cost comprises: a cost of serving the requested streaming media file either from memory or from disk." The combination of Krishnamurthy and Ueno teach wherein the cost is based upon the quality of service of the media provided. Additionally in Ueno, the prior art discusses the media having portion server from memory. Therefore appellant's arguments fail to overcome the prior art.

Dependent Claim 10

It appears appellant is arguing features which have been addressed in argument above.

Independent Claim 11 and Dependent Claim 14-15

Appellant again argues the segment-based memory, which was addressed above. Appellant also argues the cost, which is addressed by the combination of Krishnamurthy and Ueno. Therefore the presently claimed invention fails to overcome the prior art.

Dependent claim 13

Krishnamurthy and Ueno teach claim 13, "a cost of serving the request streaming file from memory if determined that the requested streaming file is in the media server's memory and a cost of serving the requested streaming file from disk if determined that the requested streaming file is not in the media server's memory," when Krishnamurthy in Col. 9 lines 20-25 when Krishnamurthy discusses prices based upon resource. Ueno discusses having different logical storage units in Col. 9 lines 56-62. Therefore appellant's arguments fail to overcome the prior art.

Dependent Claim 16

Appellant relies upon arguments addressed above for claim 16, therefore appellant's arguments fail to overcome the prior art.

Independent claim 17 and Dependent Claim 20-21

For claim 17, 20 and 21 appellant present arguments that have been addressed above, therefore appellant fails to overcome the prior art.

Dependent Claim 19

The arguments presented for claim 19 are similar to those presented for claim 13, therefore the appellant has failed to overcome the prior art.

Dependent Claim 22

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 26-27

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 28

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 35

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 36

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 40

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 41

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Dependent Claim 42

Again appellant argues features, which have been addressed above; therefore they fail to overcome the prior art.

Appellant has not presented any arguments that overcome the prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

AB

Conferees:

JASON CARDONE
SUPERVISORY PATENT EXAMINER

RUPAL DHARIA
ADVISORY PATENT EXAMINER